

IN THE MATTER OF
JOSEPH COOPER, DOING BUSINESS AS SILKTEX
HOSIERY & LINGERIE CO., ETC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1997. Complaint, Jan. 20, 1932—Decision, Apr. 25, 1932

Where an individual engaged in purchase of hosiery, and of underwear or lingerie not composed of silk, and in resale thereof through house to house canvassers, in competition with manufacturers selling hosiery, silk and other lingerie direct to consuming public, and in competition with others purchasing such articles from manufacturers thereof and reselling same to retail and other dealers in the ordinary course of trade,

- (a) Set forth trade names employed by him including word "Mills," in advertisements for canvassers in newspapers and periodicals published in various States, and made such statements as "From mill to you", "Silk-tex Mills' factory prices", and "Manufacturing wearing apparel for the entire family", in descriptive leaflets, circulars, form letters, color cards, catalogues, etc., furnished by it to his canvassers or agents and by them displayed to customers and prospective customers, and set forth upon his letterheads two pictures representing mills or factories, together with word "lingerie" under one and word "hosiery" under the other, notwithstanding fact said individual neither owned, operated, nor controlled any mill or mills and was not a manufacturer; with capacity and tendency to mislead and deceive canvassers or prospective canvassers and purchasing public into believing him to be a manufacturer selling and distributing articles dealt in at a saving in price, and induce latter's purchases in reliance on such belief, and with effect of so misleading, etc.; and
- (b) Set forth in aforesaid advertisements for canvassers, words "complete line of silk underwear", and in descriptive leaflets, etc., supplied to such canvassers, as aforesaid, words "Silktex", "silk", "silk rayon", and "rayon silk" in connection with sale of its said lingerie; with capacity and tendency to mislead and deceive canvassers or prospective canvassers into believing said individual to be a dealer in silk underwear and induce many of the consuming public to purchase his said lingerie as and for articles composed in whole or in part of silk, i. e., material derived from the product of the silk worm, and with effect of so misleading, etc.:

Held, That such practices, under the circumstances set forth, unfairly diverted trade from and otherwise prejudiced and injured competitors, operated as a restraint upon and detriment to the freedom of fair and legitimate competition in the industry concerned, prejudiced and injured the public, and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

Mr. Lewis Liberman, of Camden, N. J., for respondent.

Complaint

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the purchase of hosiery, lingerie and other merchandise, and in the resale thereof upon orders received by house to house canvassers or solicitors, and with place of business in Philadelphia, with using misleading trade names, misrepresenting business status or advantages, naming product misleadingly, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, and neither a manufacturer nor owning, operating or controlling any mills, or selling or distributing underwear composed of silk, employs such words and expressions in newspaper and periodical advertisements, directed to procuring house to house canvassers, as "Silktex Mills" and "complete line of silk underwear"; such phrases in leaflets, circulars, etc., furnished to his canvassers for their use and display in soliciting sale of his said hosiery, lingerie and other merchandise as "From mill to you", "Silktex Mills' factory prices" and "Manufacturing wearing apparel for the entire family"; and such words in the descriptive leaflets, circulars, etc., supplied to his aforesaid canvassers for their use and display, in connection with the sale of his said lingerie, as "Silktex", "silk", "silk rayon", "rayon silk".

Use of such words, expressions, etc., as alleged, have the effect of misleading and deceiving prospective canvassers into believing him to be a manufacturer, selling and distributing silk underwear, and of so misleading and deceiving the purchasing public and causing it to buy said merchandise in reliance upon the truth of said statements and representations, and in the belief that in so purchasing they are gaining an advantage in price through eliminating the middleman's profit, and of misleading and deceiving many of said public into purchasing said lingerie in the mistaken belief that the same is composed in whole or in part of silk, and have the capacity and tendency so to mislead and deceive.

Said acts or practices, as charged, thereby divert business from and otherwise prejudice and injure competitors who manufacture hosiery, etc., and sell same directly to the consuming public, competitors who purchase the hosiery, etc., dealt in by them from manufacturers and resell same to retail and other dealers and the consuming public in the ordinary course of trade, competitors who make and sell silk and other lingerie direct to the public as aforesaid and competitors

who purchase their lingerie and other merchandise from the manufacturers and resell same as aforesaid, and have the capacity and tendency so to divert; to the prejudice and injury of the public and competitors and to the detriment and restraint of free, fair, and legitimate competition in the hosiery and lingerie industry.¹

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on January 20, 1932, issued its complaint against Joseph Cooper, doing business under the trade names and styles Silktex Hosiery & Lingerie Co., Silktex Mills, Silktex Hosiery Mills, Silktex Lingerie & Hosiery Mills, Silktex Lingerie & Hosiery Co., Silktex Lingerie Mills Co., Silktex Lingerie Mills, and on January 21, 1932, caused the said complaint to be served upon respondent as required by law, in which complaint it was charged that respondent was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. By notice contained in said complaint respondent was notified and required, within thirty days from aforesaid date of service, unless said time be extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of the Commission's rules of practice with respect to answer and failure to answer said provisions being set forth in *haec verba* in said notice and providing in part as follows (Rule III, Sub. Div. 3):

(3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused his appearance to be entered in this proceeding nor has he during the said thirty-day period specified in said notice, or at any time, made or filed answer to said complaint. He has at no time required that the time within which he may file answer be extended, nor has the Commission granted any such extension of time.

Thereupon this proceeding came on for final hearing; and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid rules of practice, having duly considered the

¹ The "findings" *infra*, embody substantially, the allegations of the complaint, respondent having failed to appear or file answer.

record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent Joseph Cooper is an individual and has maintained a place of business in the city of Philadelphia, State of Pennsylvania. The said respondent for more than one year last past, under the trade names and styles, Silktex Hosiery & Lingerie Co., Silktex Mills, Silktex Hosiery Mills, Silktex Lingerie & Hosiery Mills, Silktex Lingerie & Hosiery Co., Silktex Lingerie Mills Co., Silktex Lingerie Mills, has been engaged in the business of purchasing hosiery, lingerie, and other merchandise and reselling the same in interstate commerce among the several States of the United States. Respondent has sold and distributed his products to purchasers thereof located at various points of location in the States other than the State of Pennsylvania upon orders solicited and received by house to house canvassers. The respondent has caused his said hosiery, lingerie, and other merchandise when sold by his house to house canvassers to be transported in interstate commerce from Philadelphia, Pa., to the purchasers thereof. In the course and conduct of his said business said respondent has been in competition with other individuals, partnerships, and corporations engaged in the sale and transportation in interstate commerce of hosiery, lingerie and other merchandise.

PAR. 2. Respondent has procured his agents or house to house canvassers by means of advertisements inserted in newspapers and periodicals published in various States of the United States and circulated in interstate commerce, such advertisements being advertisements of his merchandise and for agents to sell his merchandise. The advertisements which respondent has caused to be inserted and published as above stated contain the following words and phrases among others, to wit:

Run-proof hosiery. Guarantee with every pair. Silktex Mills, Philadelphia, Pa.

Agents—Run-proof hosiery, guaranteed full fashioned; Pure silk; low prices; every pair guaranteed in writing. Silktex Mills, Philadelphia, Pa.

Agents—Full fash. ladies' pure silk hose, 90¢. Complete line of silk underwear. Silktex Mills, 1001 Chestnut, 513 Victory Bldg., Phila.

The word "mills" and the expression "complete line of silk underwear" as used in the above advertisements are false and deceptive and have the capacity and tendency to mislead and deceive and do mislead and deceive persons seeking employment as agents or canvassers into the belief that respondent is a manufacturer and that he sells and distributes silk underwear, when in truth and

Findings

16 F. T. C.

in fact the respondent does not own, operate, or control any mill or mills and is not a manufacturer and does not sell or distribute underwear which is composed of silk. The word "silk" denotes to the trade and the purchasing public, as applied to a textile, that such textile is made from a material derived from the product of the cocoon of the silkworm.

PAR. 3. The respondent has furnished to his aforesaid canvassers or agents descriptive leaflets, circulars, form letters, color cards, illustrated catalogues, and other trade literature which said canvassers or agents have used and displayed to customers and prospective customers in connection with sales of respondent's said hosiery, lingerie, and other merchandise. Upon the aforesaid leaflets, circulars, form letters, color cards, catalogues, and other trade literature, respondent has caused to be set forth the phrases among others, to wit:

From mill to you

Silktex Mills' factory prices

Manufacturing wearing apparel for the entire family

Respondent also has on his letterheads two pictures representing mills or factories, and under one of such pictures appears the word "lingerie" and under the other of such pictures appears the word "hosiery."

The respondent also has in his various trade names as heretofore referred to the word "mills."

The above advertisements and representations and each of them are false and misleading in that respondent neither owns, operates, nor controls a mill or mills in which respondent manufactures the said merchandise, and respondent is not a manufacturer but purchases the said merchandise from others. The said advertisements and representations and each of them have the capacity and tendency to and do mislead and deceive the purchasing public and to induce the purchasing public to purchase said merchandise in the belief that said statements and representations are true and that the purchase of respondent's merchandise enables the purchaser to gain an advantage in price by reason of the elimination of a middleman's profit.

PAR. 4. Respondent furnishes to his aforesaid canvassers or agents descriptive leaflets, circulars, form letters, color cards, catalogues, and other trade literature which said canvassers or agents have used and displayed to customers and prospective customers in connection with sales of respondent's said lingerie. Upon the aforesaid leaflets, circulars, form letters, color cards, catalogues, and other trade literature respondent has caused to be set forth in connection with the sale of his said lingerie the words, to wit:

Conclusion

Silktex

Silk

Silk rayon

Rayon silk

The terms "Silktex," "silk," "silk rayon," and "rayon silk," and each and all of them used by respondent to designate and describe the aforesaid lingerie are false and misleading in that none of the lingerie of the respondent to which said terms are applied is composed in whole or in part of silk as defined in paragraph 2 hereof, but are all composed of rayon or other material than silk. The use of the said false and misleading terms "Silktex," "silk," "silk rayon," and "rayon silk" by the respondent as aforesaid has the capacity and tendency to mislead and deceive and does mislead and deceive and causes many of the consuming public to purchase respondent's said lingerie in the belief that same is composed in whole or in part of silk as above defined.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof a number of manufacturers of hosiery, lingerie, and other merchandise who sell their hosiery, lingerie, and other merchandise directly to the consuming public. There are many others of said competitors who purchase the hosiery, lingerie, and other merchandise, in which they deal, from others who manufacture the same, and who resell said hosiery, lingerie, and other merchandise to retail and other dealers and to the consuming public in the ordinary course of trade.

There are among the competitors of respondent referred to in paragraph 1 hereof a number of manufacturers of silk and other lingerie who sell their lingerie directly to the consuming public. There are many others of said competitors who purchase lingerie and other merchandise in which they deal from others who manufacture the same, and who resell said merchandise to retail and other dealers and to the consuming public in the ordinary course of trade.

CONCLUSION

The use by the respondent, Joseph Cooper, of the false representations, statements, and assertions under the conditions and circumstances set forth in the foregoing findings are unfair methods of competition in interstate commerce and (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c) operate as a restraint upon and detriment to the freedom of fair and legitimate competition in the hosiery and lingerie industry and constitute a violation of section 5 of an act of Congress entitled "An act to create a Federal Trade